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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/931,425      | 08/16/2001  | Kirk C. Salomon      | 10629-003           | 2900             |

20583 7590 10/06/2004

JONES DAY  
222 EAST 41ST ST  
NEW YORK, NY 10017

EXAMINER

INGBERG, TODD D

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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2124

DATE MAILED: 10/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/931,425

Applicant(s)

SALOMON, KIRK C.

Examiner

Todd Ingberg

Art Unit

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 August 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-9.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.

10. ☒ Other: PTO-892

Todd Ingberg  
Primary Examiner  
Art Unit: 2124

***Response to Arguments***

1. Applicant's arguments filed August 27, 2004 have been fully considered but they are not persuasive.

**Applicant's Argument**

In response to the Office Action mailed March 30, 2004, and in accordance with the Advisory Action of August 13, 2004, applicant resubmits the above amendments and the following remarks. Reconsideration of the pending claims 1-9 in the present application is respectfully requested.

Applicant thanks the Examiner for considering previously submitted arguments to the prior Office Action, entering the amendments and not maintaining the prior rejections in the Office Action. In this response, applicant has further amended claim 1 to correct some inadvertent typographical errors of omission. These corrections being of form only, do not result in any substantive change in scope of the claimed invention and merely serve to place the pending claims in form for issuance. No new matter has been added by way of these amendments.

In paragraphs 2-3, the Office Action rejected claims 1-9 under 35 U.S.C. § 103(a) as being unpatentable over "Focus on Open View A Guide to Hewlett-Packards Network and Systems Management Platform" published in 1995 ("HP Guide") in view of US Patent No. 5,909,437 issued to Rhodes et al. ("Rhodes").

In paragraph 3 the Office Action provides detailed ground for the rejection of each of the claims 1-9. Specifically, the Office Action provides detailed grounds for rejecting claim 1, the only independent claim, in paragraph 3. Applicant respectfully traverses these rejections for at least the following reasons.

The combination of the Rhodes with HP Guide also fails to teach, disclose or suggest several features of the claimed invention. For example, the Office Action concedes at the outset that HP Guide fails to teach updating or distribution of applications over wireless connections as described in claim 1. However, there are other features of the claimed invention that are also missing from the HP Guide. For example, the HP Guide does not teach "a central application server program configured to be downloaded to one or more remote wireless application server computers." Moreover, this deficiency is not cured by Rhodes.

**Examiner's Response**

Examiner disagrees. The HP OpenView reference clearly teaches the ability to not only download software with the Software Distributor (Pages 179 – 183), but also the ability to perform inventory on the client pages 220 to 221. The software Distributor is a central application server program configured to be downloaded to one or more remote application

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server computers. The reference does not state it supports wireless, however, the prior art of record shows HP OpenView and UniCenter TNG have gone wireless. The HP reference shows downloading to clients and on page 220 mentions the configuring of a NetWare Server. The addition of Rhodes was to add wireless.

Furthermore, the ability for the client to update the server is part of the configuration of the workstation page 220. Further proof of intelligence in the client is also part of the ability to perform troubleshooting as per pages 218 – 219. the combination of the Rhodes reference is to allow for wireless devices to be part of the network and represent clients (termed a workstation).

#### **Applicant's Argument**

Rhodes is by its own admission suitable for very limited uses. Indeed, Rhodes notes that its system is "intended to be used with fixed subscriber locations rather than the more familiar mobile cellular telephone systems." See column 1, lines 17-19. Thus, it presupposes fixed subscriber terminals that may be accessed using a wireless link. Be that as it may, there is no motivation to combine Rhodes with HP Guide to arrive at the claimed invention since the combination continues to lack the required "central application program" as noted above.

#### **Examiner's Response**

Applicant's argument is not directed toward claimed subject matter.

2. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., subscriber locations) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

#### **Applicant's Argument**

Therefore the rejection of claim 1 must be withdrawn. Axiomatically, in view of the resultant patentability of claim 1, claims 2-7 that are dependent upon claim 1 are also patentable. Moreover, claim 8 that has been rejected on similar grounds by the Office Action is also patentable since it also discloses the limitation of a downloadable "application server program" discussed earlier.

#### **Examiner's Response**

Applicant's arguments above were not persuasive.

#### **Applicant's Argument**

Claim 9 was rejected on similar grounds as claims 1 and 8. It too is patentable since neither the HP Guide nor Rhodes teach, disclose or suggest a wireless client component executing on a wireless device that has been configured to exchange data with the central site application server and a remote site server computer. Therefore, claim 9 is also patentable.

#### **Examiner's Response**

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Examiner disagrees. The HP OpenView reference clearly teaches the ability to not only download software with the Software Distributor (Pages 179 – 183), but also the ability to perform inventory on the client pages 220 to 221. The ability for the client to update the server is part of the configuration of the workstation page 220. Further proof of intelligence in the client is also part of the ability to perform troubleshooting as per pages 218 – 219. the combination of the Rhodes reference is to allow for wireless devices to be part of the network and represent clients (termed a workstation).

### ***Conclusion***

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Despite any limitations Applicant elects to impose on the combination of HP OpenView and Rhodes, the fact is that since the 1995 printing of the Muller reference OpenView and UniCenter TNG (joint venture as documented in Muller), have gone wireless as shown in the articles made of record on the PTO-892.

### ***Correspondence Information***

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Todd Ingberg** whose telephone number is (703) 305-9775.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Kakali Chaki** can be reached on (703) 305-9662. Please, note that as of August 4, 2003 the **FAX number** changed for the organization where this application or proceeding is assigned is **(703) 872-9306**.

Also, be advised the United States Patent Office **new address** is

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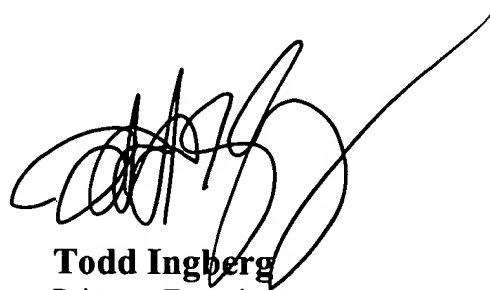
Alexandria, Virginia 22313-1450

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-9700.

***Special Notice***

5. Please, Note the Examiner's telephone number will change in October when the Art Unit moves to the new location. The Examiner's new telephone number will be as follows:

**(571) 272-3723**

A handwritten signature in black ink, appearing to read 'Todd Ingberg', with a long, sweeping horizontal line extending to the right.

**Todd Ingberg**  
Primary Examiner  
Art Unit 2124  
September 29, 2004